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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

GOLD, Stephen et al.

U.S. Patent Application No. 09/826,811

Filed: April 6, 2001

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:  
: Confirmation No. 6456  
:  
: Group Art Unit: 2172  
:  
: Examiner: Baoquoc N. To

For: QUOTA MANAGEMENT IN CLIENT SIDE DATA STORAGE BACK-UP

RECEIVED

FEB 27 2004

PETITION TO HAVE AMENDMENT AFTER FINAL REJECTION ENTERED

Technology Center 2100

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On February 19, 2004  
Mike John

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

On January 20, 2004, Applicants filed an Amendment after final rejection. The Examiner responded to the Amendment after final rejection by asserting the Amendment to claims 30, 32 and 40 raised new issues, requiring further search and consideration. The Examiner did not make any comments to the amendments to dependent claims 26-28, 35, 38 and 41. Therefore, apparently, the Examiner did not feel the amendments to the dependent claims required further search and consideration.

Applicants cannot agree that the amendments to independent claims 30, 32 and 40 raise new issues and, therefore, submit this Petition to force entry of the amendments to these claims, as well as all other claims.

The amendments to the claims were solely for antecedent and clarity purposes and were not of a substantive nature. In claim 30, the words "the client computer" were changed to --the client computers--. This change was made because there was no antecedent for "the client

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computer.” Instead, the claim previously recited “plural client computers.” In addition, the claim went on to say a backup computer receives total file size data from each of the client computers. Hence, the claim impliedly indicated the backup files were transmitted from plural client computers. The change from “the client computer” to --the client computers-- was made solely for clarity and antecedent basis problems. There is no way the Examiner could have properly previously considered claim 30 without recognizing that backup files were transmitted selectively from the client computers, instead of “the client computer.”

Claim 30 was also amended to indicate the backup computers stored total file size data. This change was made for antecedent basis problems. Claim 30 previously said the backup computer was activated “to respond to the stored total size data.” In other words, there was a statement that the backup computer stored total size data. The addition of the words “and storing” merely provided antecedent basis for the words “the stored total size data.” Hence, proper consideration of claim 30 prior to final rejection required the Examiner to consider that data were transmitted by client computers and required the backup computer to store total file size data.

Claim 32 was amended to more particularly indicate the files stored in the back-up data storage area files were files of the client computer. Previously, claim 32, line 3 said the data storage device stored files of the client computer. The Examiner, thus, was, prior to the final rejection, required to consider a data storage device for storing files of a client computer. The word “files” is used nowhere else in the claim, except in conjunction with files of the client computer. The preamble of the claim is directed to a method of operating a client computer. Consequently, the only files to be backed up to a storage area are the files of the client computer. Adding the words “of the client computer” merely emphasizes what was previously implied from the claim. Certainly, the Examiner in examining claim 32 prior to final rejection, should have considered that the files which were being backed up and stored in the client computer were the client computer files. Consequently, the amendment to claim 32 did not require consideration of new issues by the Examiner.

The change to claim 40 was similar to that of claim 32. Claim 40, as previously submitted, was directed to a method of operating a client computer with a data storage device for

storing client files. As such the Examiner previously considered such a device. The claim previously said files desired to be backed up were stored. Since the method is concerned with operating a client computer with a storage device for storing client files, the Examiner must have considered that the files that were stored and backed-up were client files. Consequently, the Examiner must have previously considered claim 40 in its currently amended form.

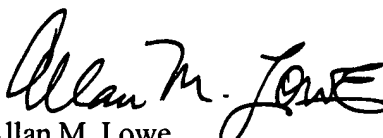
The amendments to the dependent claims, which the Examiner apparently is willing to enter since no mention is made thereof in the Advisory Action, are of a nature similar to the changes made to independent claims 30, 32 and 40. Since the Examiner was apparently able to consider these dependent claims, as indicated by the extensive comments about them, as well as implied mention of claims 30, 32 and 40, on page 3 of the Advisory Action, Applicants are unable to understand why the amendments to claims 30, 32 and 40 raise new issues requiring further search and consideration.

Based on the foregoing, entry of the Amendment after final rejection is in order.

In the event that this Petition is not granted, the Commissioner is authorized to charge the Petition fee to the deposit account of the undersigned, Account No. 07-1337.

Respectfully submitted,

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February 19, 2004  
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